UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

MANSFIELD MEMORIAL HOMES,	)	CASE NO. 1:12 CV 00042
	)	
Plaintiff,	)	JUDGE DAN AARON POLSTER
	)	
v.	)	
	)	STATUS REPORT OF DEFENDANTS
U.S. DEPARTMENT OF HEALTH &	)	U.S. DEPARTMENT OF HEALTH &
HUMAN SERVICES, et al.,	)	HUMAN SERVICES, CENTERS FOR
	)	MEDICARE & MEDICAID SERVICES,
Defendants.	)	AND U.S. DEPARTMENT OF THE
	)	TREASURY

Federal Defendants U.S. Department of Health & Human Services ("HHS"); Centers For Medicare & Medicaid Services ("CMS"); and the U.S. Department of the Treasury ("Treasury"), hereby submit the following status report in accordance with the Court's order issued January 10, 2012 (ECF No. 3).

Defendants have verified that Treasury, CMS, and its contractors have ceased all collection efforts related to the debt at issue in this case.

The claims at issue in this case were considered in two ALJ decisions, one dated April 20, 2011 and one dated September 29, 2011. After the April ALJ decision, the overpayment debt was recalculated to equal $363,352 (principal). (See Exhibit M to Complaint.) This debt is the basis for the recoupment from Plaintiff. Plaintiff has paid $246,975.49. Treasury has collected $106,061.38 through its offset program. Therefore, Plaintiff has paid approximately $353,036.87 toward this debt. Portions of these payments have been applied to interest due, which continues to accrue.

As stated in Plaintiff's complaint, Plaintiff appealed the April ALJ decision to the Medicare Appeals Council ("MAC") at the Departmental Appeals Board ("DAB"). That appeal remains pending.

On November 23, 2011, CMS requested that the MAC/DAB review the September ALJ decision. On December 17, 2011, Plaintiff filed a response and the matter remains pending before the MAC/DAB. Plaintiff did not disclose this in either its complaint or motion for temporary restraining order. Because the ALJ's decision is before the MAC/DAB, it has not been effectuated and no recalculation has been performed.

Because both of the ALJ decisions remain pending before the DAB/MAC, Plaintiff has not exhausted its administrative remedies and the Secretary has not issued a final decision with regard to Plaintiff's claims. Therefore, this Court lacks jurisdiction over Plaintiff's claims. See 42 U.S.C. §1395ff(b)(1)(A) (entitles party to judicial review of "the Secretary's final decision"). As the Supreme Court stated in Shalala v. Illinois Council on Long Term Care, Inc., 529 U.S. 1, 5-8 (2000), a plaintiff must channel "virtually all legal attacks through the agency, assur[ing] the agency greater opportunity to apply, interpret, or revise polices, regulations, or statutes without possibly premature interference by different individual courts[.]" See also, Heckler v. Ringer, 466 U.S. 602, 604 (1984) (§405(g) is the sole avenue for judicial review of all claims arising under the Medicare Act and requires a final decision of the Secretary); Cathedral Rock of North College Hill, Inc. v. Shalala, 223 F.3d 354, 359 (6th Cir. 2000).

Defendants have offered to settle this case as follows: Defendants would continue to suspend any collection efforts until the MAC issues its decision(s) and the appropriate recalculation is conducted. Moreover, Defendants would continue to process Plaintiff's future claims in the ordinary course. In exchange, Plaintiff would dismiss this lawsuit. Plaintiff has declined this offer.

Defendants respectfully request that this Court permit them 10 days within which to file a brief on the jurisdictional issue. Defendants do not believe that any additional settlement negotiations would be fruitful at this time.

Respectfully submitted,

STEVEN M. DETTELBACH
United States Attorney

By: s/Lisa Hammond Johnson
Lisa Hammond Johnson (#0061681)
Assistant United States Attorney
400 United States Court House
801 West Superior Avenue
Cleveland, Ohio 44113-1852
(216) 622-3679 - Telephone
(216) 522-4982 - Facsimile
Lisa.Hammond.Johnson@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of January, 2012, a copy of the foregoing ***Status Report of Defendants U.S. Department of Health & Human Services, Center for Medicare & Medicaid Services, and U.S. Department of the Treasury*** was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

s/Lisa Hammond Johnson
Lisa Hammond Johnson
Assistant United States Attorney